

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

Zelkowitz
PC-II

FILE:

B-219803

DATE: November 1, 1985

MATTER OF:

Martin Electronics, Inc.

DIGEST:

1. In procurements conducted under provisions of the Competition in Contracting Act of 1984 pertaining to mobilization base producers, 10 U.S.C.A. §§ 2304(b)(1)(B), 2304(c)(3), the usual concern for obtaining full and free competition is subject to the needs of industrial mobilization. Agencies properly may exclude a particular source or restrict a procurement to predetermined sources in order to create or maintain their readiness to produce critical supplies in case of a national emergency or to achieve industrial mobilization.
2. Agency's refusal to accept protester as an approved mobilization base producer, so that it can compete in a procurement restricted to such producers, is proper, since the solicitation to be issued is to support the existing mobilization base and there is no need to expand this base. There is no legal requirement that all qualified firms be accepted as mobilization base producers without regard to whether the agency's anticipated needs will be sufficient to support additional producers.

Martin Electronics, Inc. protests its exclusion from competition under request for proposals (RFP) No. DAAA09-85-R-1442, to be issued by the United States Army Armament, Munitions and Chemical Command, Rock Island, Illinois. This proposed acquisition, which was submitted to the Commerce Business Daily for synopsis on July 15, 1985, is for 58,400 MJU 8/B infrared flares and is to be restricted to five listed mobilization base producers. Although Martin is not such a producer for this flare, it insists that it is qualified to manufacture the flares and contends that by not permitting it to compete, the Army is violating the intent of the Competition in Contracting Act of 1984 (CICA), 10 U.S.C.A. §§ 2301-2306 (West Supp. 1985).

We deny the protest.

033653

Specifically, Martin states that it is currently under contract for the production of MK-46 infrared flares and that it is equally qualified to manufacture the MJU 8/B flare. Martin adds that the Army told it on March 20 that it could not be added to the mobilization base for the specified flare because of a temporary freeze on the issuance of DD Form 1519s.^{1/} Martin seeks our recommendation that it be added to the mobilization base and allowed to compete for the contract.

The Army responds that while there is indeed a temporary moratorium on processing DD Form 1519s, with exceptions on a case-by-case basis, Martin was actually denied inclusion in the mobilization base for this flare because the agency perceives no need to expand the existing base. The Army further states that the proposed RFP is restricted so as to maintain this base.

Recently, we rendered a decision on a protest filed by Martin regarding its exclusion from the competition under a similar solicitation issued by the Army. See Martin Electronics, Inc., B-219330, Sept. 20, 1985, 85-2 CPD ¶ ____. The RFP, for a quantity of MJU 7/B infrared flares, was also restricted to existing mobilization base producers. Issued on or about January 18, 1985 and thus before the effective date of the applicable provisions of CICA, the solicitation was restricted under authority of 10 U.S.C. § 2304(a)(16) (1982). The Army had restricted the procurement because it determined there was no need to expand the existing mobilization base; rather, its intent in issuing the RFP was to maintain the base. In challenging the procurement, Martin raised the same two arguments as it has here: Martin questioned the Army's decision to restrict the procurement and argued that as a qualified manufacturer of flares, it should have been accepted as a mobilization base producer.

In deciding these two issues, we recognized that in procurements negotiated under authority of 10 U.S.C. § 2304(a)(16), the normal concern of maximizing competition is subject to the needs of industrial mobilization. Thus, award to a predetermined contractor or contractors--in order to create or maintain their readiness to produce military supplies in the future--is proper. In rejecting Martin's contention that it should have been accepted as a mobilization base producer, we stated that there is no legal requirement that all qualified firms be accepted as mobilization base producers. Decisions on how many

^{1/} DD Form 1519 is an agreement between the government and the mobilization base producer concerning what is needed to sustain the latter's production capability.

producers are to be included must be left to the discretion of the military agencies, and our Office questions those decisions only if the evidence convincingly shows that the agency has abused its discretion. No such evidence was presented by Martin, and we therefore denied the protest.

Although the proposed solicitation that Martin is currently challenging will be issued under authority of CICA, rather than 10 U.S.C. § 2304(a)(16), our September decision is nevertheless dispositive. Enacted in 1984 as part of amendments to the Armed Services Procurement Act, the CICA provisions do not make any substantive changes with regard to mobilization base producers. Agencies continue to have authority to conduct procurements in a manner that enables them to establish or maintain sources of supply for a particular item if the agency determines that to do so would be in the interest of the national defense in having facilities available to furnish such items for industrial mobilization purposes. See 10 U.S.C.A. §§ 2304(b)(1)(B) and 2304(c)(3).2/

2/ Before the enactment of CICA, the preferred method of procurement under the Armed Services Procurement Act was formal advertising. Agencies were permitted to negotiate procurements only if one of 17 stated exceptions to the requirement for formal advertising applied. One such exception was where the agency head determined that it was necessary to restrict competition on a particular purchase for the purpose of establishing an industrial mobilization base. CICA effectively eliminated this preference for formal advertising and therefore also repealed the exceptions to its use.

CICA requires that agencies, except in limited circumstances, obtain full and open competition when conducting procurements either through the use of sealed bidding (formerly referred to as formal advertising) or, where appropriate, competitive proposals (formerly referred to as negotiation). Agencies, however, need not obtain full and open competition where the procurement is conducted for industrial mobilization purposes. In these instances, agencies, depending on their unique requirements, can use competitive procedures, but exclude a particular source from the competition, 10 U.S.C.A. § 2304(b)(1)(B), or use other than competitive procedures where it is necessary to award the contract to a particular source or sources, 10 U.S.C.A. § 2304(c)(3). Thus, CICA, while labeling certain procedures as either competitive with the exclusion of a particular source or noncompetitive, rather than as negotiation, does not substantively alter the authority of agencies to conduct procurements for industrial mobilization base purposes.

Here, the Army has again stated that it is restricting the proposed procurement for the stated quantity of MJU 8/B infrared flares because there is no need to expand the existing base and the procurement must be restricted to maintain this base. Martin has not demonstrated that the Army is abusing its discretion in restricting the proposed procurement to the five listed producers.

The protest is denied.

for Seymour E. Lee
Harry R. Van Cleve
General Counsel